UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

UNITED STATES POSTAL SERVICE

and **Case 18–CA–160232**

ST. PAUL AREA LOCAL 65, OF THE AMERICAN POSTAL WORKERS UNION

Joseph Bornong, Esq.,
for the General Counsel.
Dallas Kingsbury, Esq.,
for the Respondent.
Jeremiah Fugit, Esq.,
for the Charging Party.

DECISION

STATEMENT OF THE CASE

GEOFFREY CARTER, Administrative Law Judge. This case was tried in Minneapolis, Minnesota, on February 8, 2016. The St. Paul Area Local 65, of the American Postal Workers Union (the Union) filed the charge on September 18, 2015,[1] and the General Counsel issued the complaint on December 18, 2015.

In the complaint, the General Counsel alleged that Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) by, since on or about August 26, 2015, failing and refusing to provide the Union with information that it requested regarding preventative maintenance work orders performed by vehicle maintenance facility employee techs. Respondent filed a timely answer denying the alleged violations in the complaint.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

[1] All dates are in 2015 unless otherwise indicated.

FINDINGS OF FACT[2]

I. JURISDICTION

Respondent provides postal services for the United States and operates various facilities throughout the United States, including its vehicle maintenance facility in St. Paul, Minnesota, to perform that function. Respondent admits, and I find, that the Board has jurisdiction over Respondent and this case by virtue of Section 1209 of the Postal Reorganization Act (PRA). Respondent also admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

Since about June 1, 1971, Respondent has recognized the American Postal Workers Union as the exclusive collective-bargaining representative of employees in the following appropriate bargaining unit:

> All full-time and regular part-time motor vehicle services employees; excluding managerial employees, professional employees, employees engaged in personnel work in other than [a] purely non-confidential capacity, security guards as defined in PL 91–375, 1201(2), Postal Inspection Service employees, employees in the supplemental work forces as defined in Article 7 of the CBA, rural letter carriers, mail handlers, letter carriers, and guards and supervisors as defined in the National Labor Relations Act.

Respondent and the American Postal Workers Union have negotiated and executed successive collective-bargaining agreements, the most recent of which was effective from November 21, 2010, to November 20, 2015. The American Postal Workers Union has designated St. Paul Area Local 65 as its agent for dealing with Respondent concerning local grievances, information requests and other issues. (Tr. 13–14.)

B. Respondent's Vehicle Maintenance System

Respondent operates a vehicle maintenance facility that is located in St. Paul, Minnesota. At that facility, employee technicians repair and maintain United States Postal Service vehicles. In a typical day, an automotive technician will receive a work order (prepared by the lead technician after inspecting the vehicle) that identifies the vehicle the technician will be working on. To identify the specific repairs or maintenance that are expected for their assigned vehicle, the automotive technician will access the Solution for Enterprise Asset Management (SEAM) computer system, which (among other information) includes an electronic maintenance record

[2] Although I have included several citations in this decision to highlight particular testimony or exhibits in the evidentiary record, I emphasize that my findings and conclusions are not based solely on those specific citations, but rather are based on my review and consideration of the entire record for this case.

for each of Respondent's vehicles.[3] Once the technician is in SEAM, the technician can review the work order for the vehicle and then check off the repairs or maintenance on the work order as they are completed. In general, there are two types of work orders: preventative maintenance inspections, which are scheduled and address routine maintenance; and breakdown repairs, which are unscheduled. (Tr. 15–17, 39–40, 50–56; see also R. Exhs. 1–3 (excerpts of a sample work order).)

C. The Union's July 27, 2015 Information Request

On or about July 27, 2015, the Union requested that Respondent provide the following information concerning the St. Paul vehicle maintenance facility:

> Copy of all [preventative maintenance inspection] work orders performed by [vehicle maintenance facility] employee techs for [the] past 2 months, to include the repair work lines and parts request pages

(GC Exh. 2; see also Tr. 41–42, 71.) The Union requested this information because it wished to investigate reports that the manager in the vehicle maintenance facility was deleting items from the preventative maintenance inspection work orders, including repairs or maintenance work that the lead technician recommended. Decisions to delete items from work orders posed a concern to the Union because there was a risk that important maintenance work might not be completed and thus leave the vehicle in an unsafe condition, and because the manager would be taking work away from members of the bargaining unit.[4] (Tr. 20–21, 43–44.)

D. Respondent's Initial Responses to the July 27, 2015 Information Request

On August 3, vehicle maintenance facility supervisor Russ Bohach wrote a memo to Brian Borgerson, who serves as the Union's senior union steward and is also a lead automotive technician at the vehicle maintenance facility. Bohach stated as follows in his memo regarding the July 27 information request:

> This memo is to inform you as per our conversation of August 3, 2015 in regards to the [request for information] about [preventative maintenance inspections].

[3] Before the SEAM computer system was implemented in 2012, Respondent maintained paper "vehicle jackets" for each of its vehicles. The vehicle jackets contained paper copies of all work orders completed on the vehicle over the preceding two years. (Tr. 17, 35.)

[4] Respondent denies deleting items from work orders, but does assert that its managers have the right to delete items, particularly if they determine that the work is not necessary. Respondent describes this problem as "overteching" the vehicles, meaning that technicians do more work on a vehicle than is necessary. Thus, for example, if the lead technician states that the technician should replace a vehicle's brake pads, but the technician notifies the manager that the brake pads are still in good condition and will last until the next date for maintenance, Respondent maintains that the manager has the authority to delete that item from the work order. (Tr. 61–63, 85; see also Tr. 43–44 (noting that shortly after learning of the July 27 information request, facility manager Jim Eckholm told a union steward that he (Eckholm) had the authority to delete items from work orders), 55–56 (noting that while a manager may delete the labor for a specific task in a work order (such as the labor required to replace a brake pad), the manager may not delete the corresponding parts for that task (i.e., the new brake pad).)

> As the way you wrote the [request for information] it will take additional time to obtain the information. I already have 2 HOURS OF TIME into this [request for information].
>
> **At this time there [are] over 1000 work orders that must be checked.**
>
> In accordance with Article 31 of our collective-bargaining agreement and applicable postal regulations, the cost of researching and or providing the information you requested will be charged **at the rate of $32 per hour above 2 hours and 15 cents per copy over the initial 100 copies.**[5] Please inform me if there is a limit to the amount of time and or copies that you wish me to adhere to.

(GC Exh. 12 (exhibit 2) (emphasis in original); see also Tr. 40–41.)

Later in August, David Cook, who serves as the Union's industrial relations director and is also a lead automotive technician at the facility, spoke to Bohach about the information request. Regarding Bohach's position that the information request would require Respondent to produce a large quantity of information such that Respondent would need to charge the Union for providing copies, Cook suggested that Respondent simply provide a list of vehicles that had been serviced in the previous two months, and allow the Union to access SEAM to review information and identify specific work orders to request. Bohach agreed to provide the Union with a list of work orders, but the list did not include any specific information about the work that was done on each vehicle. (Tr. 13, 21–24; GC Exh. 3 (sample page from list of work orders); GC Exh. 12 (exhibit 2) (complete list of work orders).)

E. August 10, 2015 – the Union Revises its Information Request

On August 10, the Union (through Borgerson) sent the following revised information request to Respondent:

> Access to SEAM system to review [preventative maintenance inspection] work orders and parts requests as referenced in [request for information] dated 7/27/15. This is the final request for access to the SEAM system.

(GC Exh. 4; see also Tr. 24–25, 66–68.) After receiving the revised information request, Bohach consulted with Respondent's labor department and was advised that an employee should not be

[5] Article 31, Section 3 of the collective-bargaining agreement states that Respondent "will make available for inspection by the Union all relevant information necessary for collective bargaining or the enforcement" of the collective-bargaining agreement, but notes that Respondent "may require the Union to reimburse the USPS for any costs reasonably incurred in obtaining the information." (R. Exh. 6.) In this case, Respondent relied on Section 4–6.6 of Handbook AS 353 to determine the fees that it sought to charge the Union for providing the materials sought in the July 27 information request (and also the August 10 revised information request, discussed infra). See R. Exh. 5 (p. 3) (setting the fee for search time as 2 hours free and $32/hour thereafter, and setting the fee for copying as no charge for the first 100 pages, and then 15 cents/page thereafter); Tr. 77–78; see also R. Exh. 4 (Article 19, Section 1 of the collective-bargaining agreement, which permits Respondent to maintain handbooks and manuals that are consistent with the collective-bargaining agreement).

allowed to access SEAM when acting as a union representative (as opposed to when the employee is carrying out his or her job function and thus is allowed to access SEAM for that purpose). (Tr. 60–61, 73, 81.)

On August 13, Cook emailed Bohach to ask about Respondent's position on the Union's revised information request. (GC Exh. 5; Tr. 25–26.) Bohach then sent the following response to the Union:

> This is in response to your recent request dated 8-10-2015 for "**Access to SEAM system to review PMI work orders and parts requests referenced in RFI dated 7/27/2015 [. . .]"**
>
> Please be advised that your request for access to the [SEAM] web-based application is denied. However, to the extent that you are requesting *information* contained in the SEAM application, you are invited to review the relevant information in the company of an authorized management official.
>
> Based on the number of work orders that the union wants to be reviewed, approximately 700, I estimate that it will take approximately 16 hours (about 1.5 minutes per work order) to review the information. Having used the initial 2 hours on the first part of this request, the APWU will be required to reimburse the Postal Service for any additional hours expended in response to this request. Per the parties' Agreement, costs are calculated in accordance with Handbook AS 353 Section 4–6, and are therefore estimated to be $512.00.
>
> To be clear, this is not a denial of your request, but a good faith effort to bargain and negotiate a reasonable solution to provide a response in a timely manner.

(GC Exh. 6 (emphasis in original); see also id, fn. 1 (noting that while Borgerson has access to SEAM for his Postal Service duties, his access is strictly limited to the performance of those duties); Tr. 26, 73–74, 80.)

F. August 14–20,2015 – Unsuccessful Attempts to Resolve the Information Request Dispute

In response to Bohach's letter, on August 14, Cook emailed Daniel Richey, Respondent's Northland District vehicle facilities manager, to see if the parties could resolve the information request dispute before the Union filed an unfair labor practice charge with the NLRB. Richey responded on August 18 that he would look into the matter. (GC Exh. 7; Tr. 27–28.)

Meanwhile, on August 19, Bohach sent a letter to Borgerson to follow up on his August 13 letter. Bohach stated as follows:

> This is a follow up letter; in regards to the letter I sent on August 13th responding to your [information request] dated 8-10-15. . . .

> I have not heard back from you in writing or verbally regarding the August 13th, 2015 letter. May I assume that the information requested in the July 27th [information request] is no longer needed? Please inform me of your decision.

(GC Exh. 8.)

Bohach's August 19 letter prompted a flurry of activity on August 20. First, Cook emailed Richey to check on the status of Richey's promise to look into the matter. (GC Exh. 7.) Second, Borgerson emailed Bohach to advise him that the Union could not accept Respondent's proposal for handling the information request, primarily due to Respondent's requirement that the Union review information on SEAM in the presence of a company official, and pay $512 to Respondent to gather and provide the information sought. (GC Exh. 9.) And third, Bohach and Borgerson spoke by telephone to discuss possible ways to resolve the dispute, including having Respondent provide the Union with two weeks' worth of work orders to review, with the Union reserving the right to see additional work orders if it found issues with work order lines being removed. (Tr. 45–46; see also GC Exh. 7 (Richey advised Cook that Bohach would be calling Borgerson to see if they could work out an agreement about the information request).)

Ultimately, on August 20, Bohach sent a letter to Borgerson to reject the Union's proposal for how to handle the information request. Bohach stated:

> This is in regards to our telephone call on 08/20/2015.
>
> We discussed the possibility of reviewing a 2 week period of work orders. You stipulated that if you found information in those work orders you would want to continue searching the rest of the work orders.
>
> The Postal [S]ervice cannot agree to this stipulation, without being compensated for management's time involved in reviewing additional work orders. If you change your mind and wish only to review the 2 weeks as we discussed please let me know so that we may complete the [request for information].

(GC Exh. 10.) When Cook contacted Richey to discuss the issue further, Richey advised Cook that it would be quicker for the Union to obtain the information it sought if the Union filed a charge with the NLRB. (Tr. 31–32 (noting that since August 20, Respondent has maintained its position that the Union needs to compensate Respondent for management's time in responding to the information request).)

G. History of Allowing the Union to Search SEAM or Paper Files in Connection With Information Requests

Between 2012 (when SEAM was implemented at the St. Paul vehicle management facility) and March 4, 2015, Respondent approved at least a dozen union information requests to access SEAM (using the Union representative's employee password) and gather information related to the request. Similarly, before SEAM was implemented in 2012, Respondent approved at least a dozen union information requests to review Respondent's paper files. In both circumstances, Respondent allowed the Union to review SEAM or its paper files without an

official of Respondent being present. (GC Exh. 11 (sample requests to access SEAM that Respondent approved in 2014 and 2015); Tr. 32–37 (noting that the Union representative who accessed SEAM used his employee password and identification to do so after receiving authorization from Respondent).)

Respondent does not dispute any of this history. However, when the Union submitted the information requests at issue in this case, management at the St. Paul vehicle maintenance facility contacted Respondent's labor department and followed that department's instruction that the Union should not have "free access" to Respondent's files, but instead obtain files through a supervisor. (Tr. 60–61, 72–73, 80–81; see also GC Exh. 17 (providing a link to the 2010–2015 collective-bargaining agreement, which states in Article 17.3 that a union representative "may request and shall obtain access through the appropriate supervisor to review the documents, files and other records necessary for processing a grievance or determining if a grievance exists").)[6]

DISCUSSION AND ANALYSIS

A. WITNESS CREDIBILITY

A credibility determination may rely on a variety of factors, including the context of the witness' testimony, the witness' demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities and reasonable inferences that may be drawn from the record as a whole. *Farm Fresh Co., Target One, LLC*, 361 NLRB No. 83, slip op. at 13–14 (2014); see also *Roosevelt Memorial Medical Center*, 348 NLRB 1016, 1022 (2006) (noting that an ALJ may draw an adverse inference from a party's failure to call a witness who may reasonably be assumed to be favorably disposed to a party, and who could reasonably be expected to corroborate its version of events, particularly when the witness is the party's agent). Credibility findings need not be all-or-nothing propositions — indeed, nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness' testimony. *Farm Fresh Co., Target One, LLC*, 361 NLRB No. 83, slip op. at 14. To the extent that I have made them, my credibility findings are set forth above in the findings of fact for this decision.

B. SHOULD THIS CASE BE DEFERRED TO ARBITRATION?

In its answer to the complaint, Respondent asserted as one of its affirmative defenses that the complaint allegations in this case should be deferred to the parties' grievance-arbitration procedure. (GC Exh. 1(e), p. 4.) Thereafter, Respondent did not pursue that affirmative defense until it suggested in its post trial brief that if I determined that Respondent violated the Act, I should defer this case to arbitration as a "remedy" for that violation. (R. Posttrial Br. at 7.)

Contrary to Respondent's suggestion that I should treat deferral as a possible remedy, it is well established that before considering the merits of the allegations in the complaint, I first must

[6] The entire 2010–2015 collective-bargaining agreement is part of the evidentiary record. However, in lieu of including a paper copy of that agreement in the record, the parties agreed to provide a link to the 2010–2015 collective-bargaining agreement as posted on Union's website. (Tr. 10–12; GC Exh. 17 (identifying the link as http://www.apwu.org/sites/apwu/files/resource-files/APWU%20Contract%202010-2015.pdf).)

resolve the threshold issue of whether the Board should defer to the parties' grievance-arbitration procedure. *St. Francis Regional Medical Center*, 363 NLRB No. 69, slip op. at 17 (2015); *United Hoisting & Scaffolding, Inc.*, 360 NLRB No. 137, slip op. at 4 (2014). I need not tarry long on this point, however, because the Board has consistently held to a longstanding policy of nondeferral to arbitration in information request cases. *SBC California*, 344 NLRB 243, 243 fn. 3, 245 (2005); see also *St. Francis Regional Medical Center*, 363 NLRB No. 69, slip op. at 17. I do not find a basis for departing from the Board's established precedent on this issue, and accordingly reject Respondent's argument that this information request case should be deferred to arbitration.

C. Did Respondent Violate Section 8(a)(5) and (1) of the Act by Failing and Refusing to Permit the Union to Access SEAM in Connection with the Union's July and August 2015 Information Requests?

1. Complaint allegation

The General Counsel alleges that Respondent violated Section 8(a)(5) and (1) of the Act by, since on or about August 26, 2015, demanding unreasonable fees and other conditions, and thus failing and refusing to provide the Union with information that the Union requested in July and August 2015.

2. Analysis

An employer's duty to bargain includes a general duty to provide information needed by the bargaining representative in contract negotiations and administration. Generally, information concerning wages, hours, and other terms and conditions of employment for unit employees is presumptively relevant to the union's role as exclusive collective-bargaining representative. By contrast, information concerning extra-unit employees is not presumptively relevant, and thus relevance must be shown. The standard for relevancy is a liberal discovery-type standard, and the sought after evidence need not be necessarily dispositive of the issue between the parties but, rather, only of some bearing upon it and of probable use to the labor organization in carrying out its statutory responsibilities. *Public Service Co. of New Mexico*, 360 NLRB No. 45, slip op. at 2 (2014); *A-1 Door & Building Solutions*, 356 NLRB 499, 500 (2011).

The duty to furnish information also requires a reasonable good-faith effort to respond to the request as promptly as circumstances allow. An employer must respond to the information request in a timely manner, and an unreasonable delay in furnishing such information is as much of a violation of Section 8(a)(5) as a refusal to furnish the information at all. *Castle Hill Health Care Center*, 355 NLRB 1156, 1179 (2010) (citing *Amersig Graphics, Inc.*, 334 NLRB 880, 885 (2000); *Good Life Beverage Co.*, 312 NLRB 1060, 1062 fn. 9 (1993)).

In this case, Respondent does not dispute that the information that the Union requested from SEAM is relevant to the Union's duties as the exclusive collective-bargaining representative of employees in the bargaining unit. (See R. Posttrial Br. at 5–6.) Thus, Respondent has consistently indicated that it is willing to provide the information that the Union requested. The parties disagree, however, about the method that Respondent offered for providing the information to the Union. Specifically, Respondent maintains that one of its

supervisors must access SEAM on the Union's behalf, and that the Union must reimburse Respondent for the cost of the supervisor's time in excess of two hours, as well as for the cost of any copies in excess of 100 pages. On the other hand, the General Counsel and the Union maintain that although the collective-bargaining agreement allows Respondent to require the Union to reimburse Respondent for any costs reasonably incurred while complying with an information request, Respondent's request for reimbursement in this case is unreasonable because Respondent, consistent with past practice, should permit the Union to access SEAM and review Respondent's electronic files on its own (using the existing employee account of a union representative). (See GC Posttrial Br. at 5.)

The Board encountered a somewhat similar dispute in *Albertson's, Inc.*, 351 NLRB 254, 285–289 (2007), a case in which the union asked the employer to provide information that the union needed to update its employee records, including employee names, addresses, classifications, wage rates, dates of hire, and social security numbers. Initially, the employer advised the union to contact the director at each store, who would arrange a time to meet and then read the information aloud for the union representative to write down.[7] The union attempted to obtain the information as instructed, but later advised the employer that the process was not satisfactory because (among other problems) it was time intensive since there were approximately 26 stores involved, it was difficult for the union representative to record the information accurately when read aloud, and store directors were often unavailable or cut meetings short. Notwithstanding the union's report, the employer insisted that the union still obtain the information at each store, and refused the union's request that the employer compile a single response and provide it to the union. Id. at 285–286.

The Board affirmed the judge's ruling that the employer violated the Act. Id. at 254 fn. 6, 289. As the judge explained, the standard in information request disputes "has its roots in reasonableness." Thus, "[a]n employer has no obligation to distill and extract at great cost and inconvenience information requested by the Union in a particular manner and form, if alternatives are satisfactory." Conversely, "an employer may not with impunity needlessly make it difficult for the Union to obtain relevant information necessary to its representative role." Id. at 287. Based on those principles, it was unreasonable (and therefore unlawful under Section 8(a)(5) and (1) of the Act) for the employer to require the union to obtain the information store-by-store when there were reasonable alternatives available (such as the employer compiling a single response and providing it to the union) that were less costly and less burdensome. Id. at 288–289.

Applying the analysis in *Albertson's* to facts and circumstances of the case at hand, I find that it was unreasonable for Respondent to insist that the Union pay for the cost of having a supervisor access SEAM and review/copy materials on the Union's behalf. The General Counsel demonstrated that Respondent had a satisfactory alternative available that would have enabled it to comply with the Union's information request without imposing unnecessary costs on the Union. Specifically, Respondent had an established past practice of authorizing a union representative at the vehicle maintenance facility to access SEAM (or paper files when those were used) to review files relevant to an information request, provided that the union

[7] The employer and union arguably had a past practice of exchanging information at the store level, but that practice applied when limited amounts of data were at issue. *Albertson's, Inc.*, 351 NLRB at 289.

representative was one of Respondent's employees.[8] One benefit of that method, of course, was that the Union could access the information that it needed without taking up the time of one of Respondent's supervisors, and thus could avoid incurring any costs for supervisor time needed to comply with the information request.[9]

When confronted at trial with evidence of its past practice of allowing union representatives to access SEAM pursuant to an information request, Respondent explained that it decided to terminate that practice based on advice from its labor department. In other words, Respondent simply changed its mind about allowing union representatives to access SEAM pursuant to information requests. (Findings of Fact, Section G.) That explanation misses the mark on the merits of the dispute because it does not establish that it was reasonable for Respondent to ignore past practice, deny the Union's request to access SEAM, and require the Union to use a considerably more expensive method for obtaining the information requested.[10]

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[8] The Board has explained that an employer's regular and longstanding practices that are neither random nor intermittent become terms and conditions of employment even if those practices are not required by a collective-bargaining agreement. As such, these past practices cannot be changed without offering the unit employees' collective-bargaining representative notice and an opportunity to bargain, unless there is a clear and unmistakable waiver of that right. *J & J Snack Foods Handhelds Corp.*, 363 NLRB No. 21, slip op. at 15 (2015); *Garden Grove Hospital & Medical Center*, 357 NLRB 653, 657 (2011); see also *Palm Beach Metro Transportation, LLC*, 357 NLRB 180, 183 (2011) (noting that the party asserting the existence of a past practice bears the burden of proof on the issue, and that the evidence must show that the practice occurred with such regularity and frequency that employees could reasonably expect the practice to continue or reoccur on a regular and consistent basis), enfd. 459 Fed. Appx. 874 (11th Cir. 2012).

Respondent acknowledges the Board's legal standard for past practices, but asserts that the General Counsel did not prove that Respondent had a past practice of authorizing union representatives to use their employee passwords and access SEAM to gather information for an information request. (R. Posttrial Br. at 5.) Respondent's argument on that point is without merit. The General Counsel established that, on multiple occasions, Respondent permitted union representatives to access SEAM as well as paper files pursuant to information requests. (FOF, Section G.) That unrebutted evidence demonstrated that Respondent had a past practice of authorizing union representatives to access SEAM in the manner that the Union requested in August 2015.

[9] I note that the Union's case here is even stronger than the union's case in *Albertson's*, because in *Albertson's*, the employer could argue that there was a past practice of providing information to the union at the store level (albeit only when the union sought a limited amount of information). *Albertsons, Inc.*, 351 NLRB at 289 (noting that the past practice supported the employer's initial decision to direct the union to obtain the information at each store, but did not support the employer's decision to continue insisting on that method once the union clarified what it needed and notified the employer of the problems that the employer's proposed method presented). Here, Respondent can make no such argument, because the past practice was to authorize Union representatives to use their employee passwords to access SEAM and gather information pursuant to an information request.

[10] Respondent also argued that Articles 17.3 and 19 of the collective bargaining agreement, coupled with Postal Service handbooks AS 353 and AS 805, amount to a clear and unmistakable waiver of any right or claim that the Union might make to access SEAM directly (or require Respondent to bargain before changing the past practice of allowing such access). (R. Br. at 6; see also fn. 8, infra (noting that past practices cannot be changed without offering the unit employees' collective-bargaining representative notice and an opportunity to bargain, unless there is a clear and unmistakable waiver of that right).) That argument fails because none of the documents that Respondent cited (whether viewed independently or collectively) sets forth a clear and unmistakable waiver of Union rights at issue here.

In light of Respondent's past practice of authorizing union representatives to use their employee accounts and access SEAM to review files relevant to information requests, I find that Respondent violated Section 8(a)(5) and (1) of the Act when it unreasonably changed course in August 2015 and refused to provide the information that the Union requested unless the Union paid Respondent to have a supervisor search SEAM and copy records on the Union's behalf.[11]

CONCLUSIONS OF LAW

1. By, on or about August 20, 2015, departing from past practice and unreasonably failing and refusing to authorize the Union to access the SEAM computer system (using the union representative's employee account) and review files as specified in the Union's July/August 2015 information request, Respondent engaged in an unfair labor practice in violation of Section 8(a)(5) and (1) of the Act and within the meaning of the PRA.

2. The unfair labor practice stated in conclusion of law 1 above affects commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[12]

Article 17.3 only requires the Union to obtain access to information "through the appropriate supervisor." The Union complied with that requirement when, consistent with past practice, it submitted its August 2015 information request that sought authorization from Respondent to access SEAM. (FOF, Section E, G.) Article 19, meanwhile, only states that Respondent may maintain handbooks and manuals if those documents do not conflict with the collective bargaining agreement. To the extent that handbook AS 353 sets forth the formula for fees (when fees are applicable) and handbook AS 805 describes corporate information security guidelines, neither of those handbooks override the collective-bargaining agreement or waive any union rights to access information in SEAM pursuant to past practice. (FOF, Section D; see also GC Exh. 12 (exhibit 7 at p. 8 (section 1–8 of handbook AS 805, which notes that the corporate information security policies in the handbook "do not change the rights or responsibilities of either management or the unions pursuant to Articles 17 and 31 of the various collective bargaining agreements or the National Labor Relations Act").) Compare *Provena St. Joseph Medical Center*, 350 NLRB 808, 815 (2007) (finding that the union waived its right to demand bargaining over a new disciplinary policy on attendance and tardiness because the management rights clause in the collective-bargaining agreement authorized the employer to act unilaterally on that issue).

[11] I emphasize that my findings and conclusions here are based on the specific facts and circumstances of this case. The following questions are not before me regarding Union access to SEAM in connection with an information request: whether a union representative who is not one of Respondent's employees may access SEAM without the assistance of a supervisor; and whether a union representative who is one of Respondent's employees may access areas of SEAM beyond the areas that he or she may access as an employee.

[12] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the

ORDER

Respondent, United States Postal Service (St. Paul, Minnesota), its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Departing from past practice and unreasonably failing and refusing to authorize the Union to access the SEAM computer system (using the union representative's employee account) and review files as specified in the Union's July/August 2015 information request.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) If it has not already done so, authorize the Union to access SEAM (using the union representative's employee account) and review files as specified in the Union's July/August 2015 information request.[13]

(b) Within 14 days after service by the Region, post at its vehicle maintenance facility in St. Paul, Minnesota, copies of the attached notice marked "Appendix."[14] Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by Respondent's authorized representative, shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, Respondent has gone out of business or closed the facility involved in these proceedings, Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by Respondent at any time since August 20, 2015.

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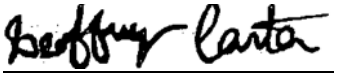
findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[13] Respondent proposed that in lieu of providing access to SEAM as indicated here, it could provide the Union with a spreadsheet that contains information that may be responsive to the Union's information request. (See R. Posttrial Br. at 7.) My order here speaks for itself, but I leave it to the parties if they wish to negotiate a different arrangement.

[14] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

Dated, Washington, D.C. March 22, 2016



Geoffrey Carter
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT depart from past practice and unreasonably fail and refuse to authorize the Union to access the SEAM computer system (using the union representative's employee account) and review files as specified in the Union's July/August 2015 information request,

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the National Labor Relations Act.

WE WILL, if we have not already done so, authorize the Union to access SEAM (using the union representative's employee account) and review files as specified in the Union's July/August 2015 information request.

UNITED STATES POSTAL SERVICE
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

Federal Office Building, Suite 200, 212 Third Avenue South, Minneapolis, MN 55401
(612) 348-1757, Hours: 8 a.m. to 4:30 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/13-CA-108215 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (612) 348-1770.